

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

THE UNITED STATES for the use of)
GMW Fire Protection, Inc., an Alaska)
Corporation,)

Plaintiff,)

vs.)

KANAG'IQ CONSTRUCTION CO.,)
INC., an Alaska Corporation and)
WESTERN SURETY COMPANY, a)
South Dakota Corporation,)

Defendants.)

Case No. A05-170 Civil (TMB)

RESPONSE TO PLAINTIFF'S OBJECTIONS TO DEFENDANTS' EXHIBITS

Defendants, pursuant to the Pretrial Order and the Federal Rules of Evidence, respond to Plaintiff's objections to their exhibits as follows:

Exhibit C. The bid price attached to the subcontract in Defendants' Exhibit C is believed to be the attachment to the subcontract as entered into between the parties. The attachment to the subcontract in Defendants' Exhibit C is the same as Plaintiff's Exhibit 8. Page nine of that document, essentially blank, is missing in both Plaintiff's and Defendants' exhibits. A copy of page nine is attached, to be included in Plaintiff's Exhibit 8 and Defendants' Exhibit C.

Exhibit D. The Affidavit of Thomas F. Johnson, Jr. is admissible non-hearsay because it is an admission against interest. Federal Rule of Evidence 804(b)(3).

1 Exhibit F. Contrary to Plaintiff's objection, Exhibit F is a fully executed
2 document. Item "E" on the first page of the document indicates that the contractor is not
3 required to sign the document. The government contracting officer did sign and date the
4 document, as required. Thus, the document is a fully executed document.

5 Exhibit G. Contrary to Plaintiff's objection, Exhibit G is a fully executed
6 document. Item "E" on the first page of the document indicates that the contractor is not
7 required to sign the document. The government contracting officer did sign and date the
8 document, as required. Thus, the document is a fully executed document.

9 Exhibit J. Defendants do not object to a provision that the exhibit contains
10 various parts of the main contract between the government and Kanag'iq.
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12 Exhibit M. First, these documents are admissible as records of Kanag'iq and the
13 government, as to communications between them about the contract, kept in the course
14 of a regularly conducted business activity, an exception to the hearsay rule. Kanag'iq
15 will authenticate the documents. Federal Rule of Evidence 803(6). Second, these
16 documents are admissible as non-hearsay because they are prior statements by witnesses
17 and the declarants will testify at trial, authenticate the written statements, and be subject
18 to cross-examination. Federal Rule of Evidence 801(d)(1). Third, these documents are
19 relevant as they concern the contract, the subcontract, and the dispute between GMW and
20 Kanag'iq. The probative value of the documents is not outweighed by any danger of
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1 confusion or waste of time, particularly since the statements are straightforward and
2 small in number. Federal Rules of Evidence 401, 402, 403.

3 Exhibit N. These documents are admissible as records or data compilations
4 kept in the course of a regularly conducted business activity, an exception to the hearsay
5 rule. Kanag'iq will authenticate the documents. Federal Rule of Evidence 803(6). These
6 documents are also admissible as the contents of voluminous writings that cannot
7 conveniently be examined in court and are thus presented in the form of a chart,
8 summary, or calculation. Kanag'iq will authenticate the documents. The originals, or
9 duplicates, shall be made available for examination or copying, if necessary. Federal
10 Rule of Evidence 1006.
11

12 Exhibit P. These documents are admissible as records or data compilations
13 kept in the course of a regularly conducted business activity, an exception to the hearsay
14 rule. Kanag'iq will authenticate the documents. Federal Rule of Evidence 803(6). These
15 documents are also admissible as the contents of voluminous writings that cannot
16 conveniently be examined in court and are thus presented in the form of a chart,
17 summary, or calculation. Kanag'iq will authenticate the documents. The originals, or
18 duplicates, shall be made available for examination or copying, if necessary. Federal
19 Rule of Evidence 1006.
20

21 Exhibit Q. Defendants do not object to a provision that the exhibit contains
22 various parts of the main contract between the government and Kanag'iq. Contrary to
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1 Plaintiff's objection, all documents are fully executed. Item "E" on the first page of the
2 first modification of contract indicates that the contractor is not required to sign the
3 document. The government contracting officer did sign and date the document, as
4 required. Thus, the document is a fully executed document.

5 Exhibit W. Defendants withdraw Exhibit W.

6 Exhibit Z. These documents are admissible as records kept in the course of a
7 regularly conducted business activity, an exception to the hearsay rule. Kanag'iq will
8 authenticate the documents. Federal Rule of Evidence 803(6).
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10 Exhibit AG. These documents are admissible as records or data compilations
11 kept in the course of a regularly conducted business activity, an exception to the hearsay
12 rule. Kanag'iq will authenticate the documents. Federal Rule of Evidence 803(6).
13 These documents are also admissible as the contents of voluminous writings that cannot
14 conveniently be examined in court and are thus presented in the form of a chart,
15 summary, or calculation. Kanag'iq will authenticate the documents. The originals, or
16 duplicates, shall be made available for examination or copying, if necessary. Federal
17 Rule of Evidence 1006.
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20 DATED at Anchorage, Alaska this 10th day of December 2007.

21 EIDE & GINGRAS, P.C.
22 Attorneys for Defendants
23 Kanag'iq Construction Co., Inc. and
24 Western Surety Company

25 By: /s/Thomas S. Gingras
Thomas S. Gingras

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CERTIFICATE OF SERVICE

I am a legal secretary employed by the law
firm of Eide & Gingras, P.C. That on this
10th day of December 2007, I served

☒ Electronically

a true and accurate copy of the foregoing
document upon the following counsel of record:

Sarah J. Tugman, Esq.
2509 Eide Street, Suite 4
Anchorage, AK 99503

EIDE & GINGRAS, P.C.

By /s/Donna Charter
Donna Charter

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